

# UNAUTHORIZED PRACTICE OF LAW IN TENNESSEE

Selected sections: UPL statute, selected UPL case law,  
complete list of UPL AG Opinions, UPL complaint form;  
Blount County *Pro Se* Form, Williamson County Circuit Court Opinion

**March 20, 2015**

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# **Tennessee Code Annotated**

## **Title 23. Attorneys-at-Law**

### **Chapter 3. Unauthorized Practice and Improper Conduct**

#### **Part 1 – General Provisions**

##### **§ 23-3-101. Definitions**

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##### **§ 23-3-113. Enforcement Provision Exception**

## **T. C. A. § 23-3-101. Definitions**

As used in this chapter, unless the context otherwise requires:

- (1) “Law business” means the advising or counseling for valuable consideration of any person as to any secular law, the drawing or the procuring of or assisting in the drawing for valuable consideration of any paper, document or instrument affecting or relating to secular rights, the doing of any act for valuable consideration in a representative capacity, obtaining or tending to secure for any person any property or property rights whatsoever, or the soliciting of clients directly or indirectly to provide such services;
- (2) “Person” means a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized; and
- (3) “Practice of law” means the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services.

**T. C. A. § 23-3-103.**  
**Unlawful Practice; Crimes and Offenses; Fines and Penalties**

- (a) No person shall engage in the **practice of law** or do **law business**, or both, as defined in § 23-3-101, unless the person has been duly licensed and while the person's license is in full force and effect, nor shall any association or corporation engage in the practice of the law or do law business, or both. However, nonresident attorneys associated with attorneys in this state in any case pending in this state who do not practice regularly in this state shall be allowed, as a matter of courtesy, to appear in the case in which they may be thus employed without procuring a license, if properly authorized in accordance with applicable rules of court, and when introduced to the court by a member in good standing of the Tennessee bar, if all the courts of the resident state of the nonresident attorney grant a similar courtesy to attorneys licensed in this state.
- (b) Any person who violates the prohibition in subsection (a) commits a Class A misdemeanor.
- (c)
- (1) The attorney general and reporter may bring an action in the name of the state to restrain by temporary restraining order, temporary injunction or permanent injunction any violation of this chapter; to obtain a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per violation, and to obtain restitution for any person who has suffered an ascertainable loss by reason of the violation of this chapter. The attorney general and reporter shall be entitled to be reimbursed for the reasonable costs and expenses of investigation and prosecution of acts under this chapter, including, but not limited to, reasonable attorney fees as well as expert and other witness fees.
- (2) The action may be brought in a court of competent jurisdiction:
- (A) In the county where the alleged violation took place or is about to take place;
- (B) In the county in which the defendant resides, has a principal place of business or conducts, transacts or has conducted business; or
- (C) If the defendant cannot be found in any of the locations in subdivisions (c)(2)(A) and (B), in the county in which the defendant can be found.
- (3) The courts are authorized to issue orders and injunctions to restrain, prevent and remedy violations of this chapter, and the orders and injunctions shall be issued without bond.
- (4) Any knowing violation of the terms of an injunction or order issued pursuant to this chapter shall be punishable by a civil penalty of not more than twenty thousand dollars (\$20,000) per violation, in addition to any other appropriate relief.
- (d)
- (1) Any organized bar association of a municipality, county, except any county having a metropolitan form of government, or multi-county region in which a violation occurs may bring a civil action seeking relief, as provided in this chapter, against any person that violates this chapter. Any organized statewide bar association, primarily representing plaintiff attorneys and having no locally-based affiliate associations, may bring a civil action in the municipality or county in which a violation occurs seeking relief, as provided in this chapter, against any person that violates this chapter. Upon the commencement of any action brought under this section by any bar association, the bar association shall provide a copy of the complaint or other initial pleading to the attorney general and reporter, who, in the public interest, may intervene and prosecute the action. The pleadings shall be provided to the attorney general and reporter simultaneously with the initial service to the defendant or defendants. Additionally, all subsequent filings shall be provided to the attorney general and reporter, including any judgments or notices of appeal by the initiating bar association.
- (2) Any bar association bringing suit under this section is presumed to be acting in good faith and is granted a qualified immunity for the suit and the consequences of the suit. The presumption of good faith is rebuttable upon a showing by a preponderance of the evidence that the suit was brought for a malicious purpose.

### **T. C. A. § 23-3-104. Division of Fees and Compensation; Penalty**

- (a) Except as provided in the Tennessee rules of professional conduct, it is unlawful for any licensed attorney in the state to divide any fees or compensation received in the practice of law or in doing law business with any person not a licensed attorney.
- (b) A violation of this section is a Class C misdemeanor.

### **T. C. A. § 23-3-108. Misrepresentation; crimes and offenses**

- (a) It is unlawful for any person, either directly or indirectly, falsely to advertise the person as, or hold the person out as, a lawyer.
- (b) A violation of this section is a Class E felony.

### **T. C. A. § 23-3-112. Actions for loss of money, property, or other thing of value; damages; reimbursement; exception; limitations**

- (a)
  - (1) Any person who suffers a loss of money or property, real, personal or mixed, or any other article, commodity or thing of value wherever situated, as a result of an action or conduct by any person that is declared to be unlawful under § 23-3-103, § 23-3-104 or § 23-3-108, may bring an action to recover an amount equal to the sum of treble any actual damages sustained by the person and treble any amount paid by the person, and may be afforded such other relief as the court considers necessary and proper. The attorney general and reporter may bring an action in the name of the state to restrain by temporary restraining order, temporary injunction or permanent injunction any violation of this chapter; to obtain a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per violation, and to obtain restitution for any person who has suffered an ascertainable loss by reason of the violation of this chapter. The attorney general and reporter shall be entitled to be reimbursed for the reasonable costs and expenses of investigation and prosecution of acts under this chapter, including, but not limited to, reasonable attorney fees as well as expert and other witness fees.
  - (2) The action may be brought in a court of competent jurisdiction in the county where the alleged acts or conduct took place or is taking place, in the county in which the defendant resides, has a principal place of business, conducts, transacts or has transacted business, or, if the defendant cannot be found in any of those locations, the action may be brought in the county in which the defendant can be found.
  - (3) If the court finds that the defendant knowingly or willfully engaged in unlawful acts or conduct under § 23-3-103, § 23-3-104 or § 23-3-108, the court may award treble the actual damages sustained and treble the amount paid, and may provide such other relief as it considers necessary and proper.

- (4)
- (A) Any person who has been affected by an act or conduct declared to be a violation of § 23-3-103, § 23-3-104 or § 23-3-108 may accept any written reasonable offer of settlement made by the person or persons considered to have violated this chapter; provided, that the tender of acceptance of a settlement offer shall not abate any proceeding commenced by the attorney general and reporter under this chapter.
  - (B) The settlement may be set aside by a court of competent jurisdiction at the request of the affected person, if the request is made within one (1) year from the date of the settlement agreement and if the court finds the settlement to be unreasonable. If the person was not represented by legal counsel at the time of the offer of settlement, the person claiming the benefit of the settlement shall have the burden of establishing that it is reasonable.
- (5) An permanent injunction, judgment or final court order made pursuant to § 23-3-103(c)(1) that has not been complied with shall be prima facie evidence of the violation of this chapter in any action brought pursuant to this section.
- (6) Upon a finding by the court that a provision of § 23-3-103, § 23-3-104 or § 23-3-108 has been violated, the person bringing the action shall be entitled to be reimbursed for the reasonable costs and expenses of investigation and prosecution of acts under this chapter, including, but not limited to, reasonable attorney fees, as well as expert and other witness fees.
- (b) This section shall not apply to an action initiated by the attorney general and reporter, any district attorney general or bar association as defined in § 23-3-103(d).
- (c)
- (1) Upon the commencement of any action brought under this section, the plaintiff shall mail a copy of the complaint or other initial pleading to the attorney general and reporter, who, in the public interest, may intervene in the case. If the attorney general and reporter does not intervene, the plaintiff shall mail a copy of the judgment, order or decree to the attorney general and reporter upon the entry of any judgment, order or decree in the action.
  - (2) If a party to an action under this section appeals a judgment, order or decree concluding this action, a copy of the notice of appeal shall be served by the appellant upon the attorney general and reporter, who, in the public interest, may intervene on appeal.
- (d) Any private action commenced pursuant to this section shall be brought within three (3) years from the person's discovery of the unlawful act or conduct.

### **T. C. A. § 23-3-113. Enforcement provision exception**

This enforcement provisions of this chapter shall not apply to any person while practicing before state administrative boards and agencies who is authorized by statute to practice and act in a representative capacity before the state or local administrative boards and agencies.

# Tennessee UPL Cases



= most important cases

**1) *Grocers & Merchants' Bureau v. Gray*, 6 Tenn. C.C.A 87 (Tenn. Ct. App. 1915)**

"A corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it any more than it can practice medicine or dentistry by hiring doctors or dentists to act for it."

**2) *State v. Retail Credit Men's Ass'n of Chattanooga*, 43 S.W.2d 918 (Tenn. 1931).**

The Tennessee Supreme Court explicitly adopts the general proposition that a corporation cannot practice law. Court found that defendant corporation 1) was improperly engaging in the practice of law when it used its own in-house counsel to sue on debts of the corporation's clients; and 2) was not improperly engaging in the practice of law when it gave reports on the status of property titles, because it was not giving an "opinion" of good title, only reporting the results of its investigation.

**3) *State v. James Sanford Agency*, 69 S.W.2d 895 (Tenn. 1934).**

A collection agency is engaged in the unauthorized practice of law when it makes a separate charge for attorney fees, retaining a portion of such fees, and employs a salaried or commission attorney to bring suit and obtain judgment on collection accounts.

**4) *State ex rel. District Attorney v. Lytton*, 110 S.W.2d 313 (Tenn. 1937).**

An agent acting pursuant to a contract with a principal does not engage in the unauthorized practice of law when it retains an attorney to seek monies allegedly owed to the principal.

**5) *Haverty Furniture Co. v. Foust*, 124 S.W.2d 694 (Tenn. 1939).**

A credit manager of a furniture company who "filled in the printed form of affidavit bond and writ of replevin" was not appearing as an advocate, nor in a representative capacity for the company. The filling in of the blank forms, "without more, was the performance of a merely clerical or ministerial act, calling for the exercise of none of the intellectual, moral or professional qualifications required in and for the practice of the law --an act which any layman, who could read and write, might properly perform," and since he did not receive additional consideration for such activity, was not law business.

"[T]he fundamental purpose underlying the enactment of the laws regulating admission to the bar and the practice of the profession [is] to insure to the public the highest quality of service possible from those offering their services to the public for a consideration."

**6) *Union City & Obion Cnty. Bar Ass'n v. Waddell*, 205 S.W.2d 573 (Tenn. Ct. App. 1947).**

Very fact-intensive exploration by the court found that defendant, a non-lawyer, ostensibly operated an insurance and real estate office, but in reality performed for valuable consideration such acts as the drawing of deeds of trust, rental contracts, timber sales and purchases, wills, and chattel mortgages. The defendant also charged for legal advice on the status of real estate titles, the existence of liens, and similar matters. The Court rejected the defendant's evasive arguments that she was just "reporting results," and instead found she was giving an "opinion" of good title and the substance of her conduct was that of engaging in law business.

**7) *Doughty v. Grills*, 260 S.W.2d 379 (Tenn. Ct. App. 1952)**

"Giving legal advice constitutes the practice of law."

**8) *Bar Ass'n of Tenn., Inc. v. Union Planters Title Guar. Co.*, 326 S.W.2d 767, (Tenn. Ct. App. 1959)**

Over a strong dissent, the majority held that a licensed title insurance company did not engage in UPL when it drafted legal documents "intimately connected" to the title insurance business. The facts of the case involved staff attorneys drafting the documents and this narrow exception has not been extended to complex documents.

Continued validity of *Union Planters* in question since statute on which it relies (T.C.A. § 62-1325) was repealed.

**9) *Berke v. Chattanooga Bar Ass’n*, 436 S.W.2d 296 (Tenn. Ct. App. 1968)**

“The preparation of loan instruments is law business.”

**10) *Ticor Title Ins. v. Smith*, 794 S.W.2d 734 (Tenn. Ct. App. 1990)**

“It is not necessary to be a lawyer in order to ascertain or review the status of the title to real property...”

**11) *Third Nat’l Bank in Nashville v. Celebrate Yourself Prod., Inc.*, 807 S.W.2d 704 (Tenn. Ct. App. 1990).**

Part owners of closely held corporation who were guarantors of corporation's promissory note could present arguments and evidence on behalf of corporation only as it related to claims against owners individually as guarantors of notes.

**12) *In re Kincaid*, 146 B.R. 387 (Bankr. W.D. Tenn. 1992)**

Questioning a debtor at a meeting of creditors is not UPL. Creditors do not lose or forfeit substantive rights at §341 meetings, it is not an adversary process, just a fact-finding one, and the § 341 “does not in any way involve the concept of advocacy [as contemplated in Tenn. Code Ann. § 23-3-101(a)].

**13) *McDevitt v. Sunshine Waterbeds, Inc.*, 1992 WL 137471 (Tenn. Ct. App. 1992).**

Filling out an appeal bond form and filing it along with a check in the amount of \$500 is not appearing as an advocate or in a representative capacity for a corporation. Relies on *Haverty*.

**14) *In re Clemmons*, 151 B.R. 860 (Bankr. M.D. Tenn. 1993).**

Court engages in fact-specific analysis regarding nature of a creditor’s meeting to find that non-lawyer’s questioning at creditors meeting does not constitute “practice of law” or “law business” under TN UPL statutes and case law - disputes Ethics Adv. Op. 92-143.

**15) *In re Petition of Burson*, 909 S.W.2d 768 (Tenn. 1995).**



The Attorney General and State Board of Equalization petitioned for review of the constitutionality of a statute permitting taxpayers contesting assessment of their property before boards of equalization to be represented by non-attorney agents. The Special Master filed a detailed fact-finding report upholding constitutionality of statute. The Supreme Court held that (1) the determination of whether a proceeding, even an administrative one, involves practice of law is a judicial function; (2) the statute permitting non-attorney agents to represent taxpayers before boards of equalization did not sanction unauthorized practice of law; and (3) the essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client. Key facts in this case persuading that Court there was no UPL include: wholly factual (as opposed to legal) determination concerning property value, no other legal arguments involved, non-adversarial session with no formal rules of procedure, no rules of evidence, and no formal discovery.

“It is neither necessary nor desirable to attempt the formulation of a single specific definition of what constitutes the practice of law. Functionally the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, non-lawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required.” *Burson*, 909 S.W.2d 768, 775.

**16) *Petition of Youngblood*, 895 S.W.2d 322 (Tenn. 1995)**

In-house attorneys for insurer may represent insureds in matters relating to insurer's policy without aiding in unauthorized practice of law; specific facts of each situation must be examined to determine if attorney is aiding non attorney (insurance company) in practice of law; payment of salary, rather than fee based on services rendered, does not per se constitute fee splitting and thus unauthorized practice. “The mere showing of the relationship of employer-employee, without a definition of the duties, loyalties, prerogatives, and interests of the parties, is not a sufficient basis on which to conclude that the attorney-employee is aiding a non-attorney in the practice of law.”





**17) *Old Hickory Eng'g & Mach. Co., Inc. v. Henry*, 937 S.W.2d 782 (Tenn. 1996).**

A corporation brought a negligence action. Following remand from Court of Appeals, the corporation took a nonsuit. Exactly one year later, a virtually identical negligence complaint was signed and filed on behalf of the corporation by its non-lawyer president. Over two months later, an attorney filed a notice of appearance on behalf of the corporation. The Sumner Circuit Court dismissed the complaint with prejudice, and the corporation appealed. The Court of Appeals reversed, and defendants appealed. The Supreme Court held that (1) the non-lawyer president's signing of the complaint did not comply with pleading requirement that complaint be signed either by an attorney of record or the party; and (2) the attorney's filing of notice of appearance did not cure deficiency. This was the first Tennessee Supreme Court case post *Burson* to quote *Burson* and to discuss what is the "practice of law." Using the *Burson* analysis, the Tennessee Supreme Court held that a corporation cannot act *pro se* in a court proceeding nor can it be represented by an officer or other non-lawyer agent; filing and preparing a pleading is practice of law.

**18) *In re Buck*, 219 B.R. 996 (Bankr. W.D. Tenn. 1998)**

Whether a written request for service of all notices in a particular case constitutes the practice of law would require proof of what such a "review" includes. Without reaching the UPL question, finds that an out-of-state law firm that served such a written request does not have to appear *pro hac vice* in bankruptcy courts until it takes a more active role.



**19) *Fifteenth Judicial Dist. Unified Bar Ass'n v. Glasgow*, No. M1996-00020-COA-R3-CV, 1999 WL 1128847 (Tenn. Ct. App. 1999).**

The Court engaged in a very fact-specific inquiry and held that "the drafting of pleadings and legal documents or the selection and completion of form documents constitutes the practice of law." "Ms. Glasgow, by her own admission, is performing more than mere clerical work for her clients. She is not simply reducing her clients' words to writing or filling in blanks on pre-printed forms at the specific direction of her clients. Rather, she is preparing legal documents that require more legal knowledge than is possessed by ordinary lay persons." Provision of forms is ok, but not advice or help with selection: "As a general matter, other courts have held that the sale of self-help kits or printed legal forms does not constitute the unauthorized practice of law as long as the seller provides the buyer no advice regarding which forms to use or how the forms should be filled out. Conversely, sellers who do advise customers on which forms to use and how to fill them out have been found to be engaging in the practice of law."

**20) *Crews v. Buckman Lab. Int'l Inc.*, 78 S.W.3d 852 (Tenn. 1999)**

In-house counsel had a permissive, but not mandatory, duty to report to Board of Law Examiners that her employer's general counsel was engaged in unauthorized practice of law, where the general counsel was not yet a licensed attorney in the State.

**21) *In re Rose (We the People)*, 314 B.R. 663 (Bankr. E.D. Tenn. 2004).**

Franchisees of We the People, the Motley's, found by the Bankruptcy Court to be engaging in UPL in TN by filing 11 bankruptcy petitions on behalf of 11 petitioners. The Bankruptcy Code allows non-attorneys to prepare petitions, but only in capacity as typists. After detailed review of Motley's actions, court found that she engaged in activities that "far exceed those offered by a mere typist." Even more importantly, "The court has determined that the documents contained in the Customer Packet disseminate legal advice and are misleading. Some of the documents expressly give legal advice, while others simply reference that a supervising attorney is available for consultation at no additional charge. Even though this attorney is not supposed to offer legal advice, his mere availability misleads customers into thinking that they are being given all of the information they require and that all of the information they are given is correct. The court recognizes that the documents in the Customer Packet are forms provided to franchisees by We the People USA. However, although Ms. Motley did not actually prepare these documents herself, she presents and publishes them to customers, thus endorsing the statements contained therein. The court believes that the documents in the Customer Packet do provide legal advice, again giving rise to the court's concerns regarding the unauthorized practice of law." (Note: contains an excellent summary of UPL case law up to 2004)

**22) *Finch v. Finch (We the People)*, 2004 WL 2272152 (Bankr. M.D. Tenn. 2004).**

Another We the People case. Again found that bankruptcy preparer overstepped being a typist. Another fact-specific inquiry. Cites and adopts some AG opinions: no paralegal practice, property managers cannot represent their clients, "managing agents" cannot represent clients in court, powers of attorney do not authorize individual to represent another individual or a partnership.



**23) *Estate of Green v. Carthage Gen. Hosp., Inc.*, 246 S.W.3d 582 (Tenn. Ct. App. 2007).**

A hospital, through a non-attorney employee, filed a claim against patient's estate for unpaid services provided to patient. The Court of Appeals held that the hospital's act of filing a claim for debts due from a decedent does not require the exercise of the professional judgment of a lawyer; look to underlying nature of the action, and also apply the professional judgment of lawyer standard from *Burson*.



**24) *Tenn. Env'tl. Council, Inc. v. Tenn. Water Quality Control Bd.*, 254 S.W.3d 396 (Tenn. Ct. App. 2007)[*Tosh Farms*]**

Whether a non-attorney's attempt to participate in a contested case hearing before the Water Quality Control Board as the representative of a corporation is permitted pursuant to Tenn. Code Ann. § 4-5-305(a), which expressly provides that a corporation may participate in the hearing by a duly authorized representative, or is prohibited as constituting the unauthorized practice of law.

- Court made it clear that the analysis is not just one of the definitions found in *Haverty* and *Old Hickory* regarding the meaning of "law business," "retained," or "valuable consideration;" *Burson* "professional judgment" analysis should always be applied.
- UPL cases are heavily fact dependent.
- UPL analysis depends on adversarial nature and complexity of the proceeding.
- Professional judgment of an attorney is implicated not only in formal, adversarial proceedings, but also in the drafting of a petition for such a complex proceeding.
- Specifically does *not* hold that all petitions submitted by corporations in administrative matters require the participation of an attorney. If the petition does not trigger adversarial proceedings, wherein the rules of evidence may be enforced, direct and cross examination of witnesses may be involved, objections may be made, and discovery may be held, but instead sets the stage for a more informal, information-gathering proceedings, the corporation's representative need not be a licensed attorney.



**25) *Tenn. Env'tl. Council, Inc. v. Tenn. Water Quality Control Bd.*, 2007 WL 2827470 (Tenn. Ct. App. March 8, 2007)[*Cumberland Yacht Harbor*].**

Similar facts/ same holdings as 16, *Tosh Farms*.

**26) *Northcutt v. Northcutt*, 2007 WL 3332851 (Tenn. Ct. App. 2007).**

Fact-intensive analysis by the Court found no UPL where a prisoner had his Power of Attorney sign a service request and pay a money order.

**27) *Flanary v. Carl Gregory Dodge of Johnson City, LLC*, 2008 WL 2434196 (Tenn. Ct. App. 2008).**

The simple act of filling in the blanks on form documents that have been prepared for a business use does not constitute the unauthorized practice of law. Applies *Burson* and *Glasgow*. Not a lot of analysis.

**28) *Wilson v. Acacia Dermatology PLLC*, 2011 WL 3651779 (M.D. Tenn. 2011).**

An LLC, like a corporation, can't appear *pro se* in federal court - first case, federal or state, to apply UPL to LLC's in TN.

# UPL AG Opinions

***Note: The first two numbers in each Opinion represent the year of the Opinion. It is important to remember that Opinions prior to 1995 do not incorporate the Burson/Old Hickory analysis.***

1. 77-303. Collection agency engages in UPL when it obtains a judgment against a debtor and receives collection fees for services rendered.
2. 77-401. Company representing holders of defaulted bonds on contingency basis and attempting to collect principal of bond, acting as a collection service and engaging in UPL.
3. 77-411. Collection service engages in UPL if file suit to collect on debt.
4. 79-415. Department of Veteran Affairs can assist veterans and families with claims as long as it does not engage in UPL.
5. 79-478. Human Resources Agency can deliver legal services by licensed attorneys.
6. 80-3. Non-attorney may assist individual before the Tennessee Department of Employment Security's Appeals Tribunal without practicing law.
7. 81-119. Non-attorney representative not engaging in UPL by representing corporation in small claims or general session court.
8. 83-53. Non-attorney employee of certain non-corporate owner of real property doesn't engage in UPL by representing owner in court.
9. 85-166. Authority of a non-attorney to represent a grievant before the Civil Service Commission.
10. 85-241. Non-attorney "spokesman" for Medicaid recipient at administrative hearing not engaging in UPL.
11. 86-159. Collection agency engages in UPL if files suit and appears in court for a client; however, the collection agency does not engage in UPL by requesting issuance of an execution when authorized to do so by a judgment creditor.
12. 86-184. Situations where title insurance companies engage in authorized practice of law; situations where title insurance companies violate the Real Estate Brokerage Law.
13. 87-58. A person's representation of taxpayer before State Board of Equalization, including filing of an administrative appeal to Board, constitutes unauthorized practice of law if such services are rendered by person, other than the taxpayer, who is not permitted to practice law in Tennessee.
14. 87-183. A duly authorized representative (officer, director or employee) of a corporation is allowed to participate in an appeal to the State Board of Equalization even though neither the Tennessee Supreme Court nor the General Assembly has authorized a corporation or

other artificial entity to be represented by anyone other than through an attorney licensed to practice law in the State of Tennessee.

15. 89-120. A statute permitting a corporate officer or an employee who is not an attorney to represent the corporation in a General Sessions court would be unconstitutional since the Tennessee Supreme Court possesses exclusive jurisdiction to regulate the practice of law before Tennessee courts, including General sessions Courts, and the Court has not as of this date authorized such an individual to represent a corporation in a General Sessions Court.
16. 89-137. Whether certain conduct of corporate officers or stockholders constitutes the unauthorized practice of law; a corporation may not be represented in Tennessee courts other than by an attorney licensed to practice in Tennessee, unless otherwise authorized by the Tennessee Supreme Court.
17. 89-95. The Juvenile Court may not appoint a non-lawyer Court Appointed Special Advocate worker as guardian ad litem for a child in a dependency and neglect case as this would amount to the unauthorized practice of law.
18. U90-91. A general power of attorney does not authorize an individual to represent another individual or a partnership before the General Sessions courts (cited in *Finch v. Finch* 2004 WL 2272152).
19. 91-54. Representation of litigants in General Sessions Court by an agent or employee who is not an attorney.
20. 92-02. Unauthorized practice of law - paralegals drafting legal documents for a fee.
21. U93-42. Property managers, who are not attorneys, cannot appear before Tennessee trial courts on behalf of their clients even in uncontested litigation without legal representation (cited in *Finch v. Finch* 2004 WL 2272152).
22. 94-101. Whether the preparation of certain legal documents for a fee by persons not licensed as attorneys constitutes the unauthorized practice of law.

***The following Opinions are post-Burson/Old Hickory***

23. 97-164. Non-lawyer representation before Civil Service Commissions.
24. 99-205. Insurance adjuster acting as appraiser.
25. 00-042. Representation of the State in criminal and juvenile proceedings in General Sessions Courts.
26. 01-071. Preparation of forms; practice of law regarding probate.
27. 02-078. Unauthorized practice of law- private right of action- standing courts- completion of form contracts in the sale or lease of personal property.

28. 04-071. Preparation and use of forms by courts; practice of law.
29. 04-160. Non-lawyer corporate representation before Department of State contested case hearings.
30. 05-036. Non-lawyer representation on behalf of bonding companies before Sessions or Criminal Court.
31. 05-076. Conduct of proposed legislation's "public adjuster" may constitute unauthorized practice of law.
32. 05-132. Lawyers as lobbyists.
33. 05-133. Request for clarification of Opinion No. 05-076 regarding public adjusters and the practice of law.
34. 06-009. Removing administrative law practice exemption from Ethics Act.
35. 06-079. Mediation and the practice of law.
36. 06-108. Practice of law; preparation of Petitions for Orders of Protection.
37. 07-88. Preparation of real estate documents; unauthorized practice of law.
38. 07-166. Practice of law; Medicaid eligibility.
39. 08-137. Assistant District Attorney serving as a municipal judge.
40. 08-153. Representing participants in benefit review conference; unauthorized practice of law.
41. 09-156. Filing petitions and orders as personal representative of estate as practice of law.
42. 10-24. Separation of powers with regard to the regulation of the practice of law.
43. 14-08. Interpleader actions by real estate brokers as unauthorized practice of law.

**OFFICE OF THE TENNESSEE ATTORNEY GENERAL  
COMPLAINT FORM  
UNAUTHORIZED PRACTICE OF LAW**

Please return this completed form to:  
**STATE OF TENNESSEE**  
**Office of the Attorney General**  
**Consumer Advocate & Protection Division**  
**Attn: Unauthorized Practice of Law**  
**P.O. Box 20207**  
**Nashville, TN 37202-0207**  
**Facsimile: (615) 532-2910**



Please carefully print or type all your responses in blue or black ink. Additionally, please respond to all questions on the front and back of this form.

**IMPORTANT:** Please note that this form is not confidential and may be disclosed if requested under the Public Records Act or during the course of litigation (if any). As a result, you should remove any social security numbers or bank account numbers before submitting this form.

Today's Date: \_\_\_\_\_

**1. Your Name:** (Mr./Mrs./Ms.) Circle correct response

First Name \_\_\_\_\_ Middle Name \_\_\_\_\_ Last Name \_\_\_\_\_

**Address:** \_\_\_\_\_  
Full Street Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**County:** \_\_\_\_\_

**Telephone number:** Day \_\_\_\_\_ Evening \_\_\_\_\_ Cell \_\_\_\_\_

**Best time to contact you:** \_\_\_\_\_

**2. Who is your complaint against?**

First Name \_\_\_\_\_ Middle Name \_\_\_\_\_ Last Name \_\_\_\_\_

Company name, if applicable \_\_\_\_\_

**3. What is their complete address and telephone number?**

Full street address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

(\_\_\_\_\_) \_\_\_\_\_  
Area code Telephone Number

**4. Does the person listed in #2, have a license to practice law?** If yes, please list the state(s) that issued the license(s): \_\_\_\_\_

5. **Please describe your complaint in detail. Please use chronological order (by dates) and include as many actual dates as possible. Attach copies of any papers or documents (receipts, advertisements, contracts, letters, front and back of canceled checks) you have available and which relate to your complaint. Please attach a separate sheet of paper if necessary. DO NOT MAIL ORIGINAL DOCUMENTS; THESE WILL NOT BE RETURNED.**
6. **Have you tried to work with the person/entity to resolve your complaint?**  
☐ yes ☐ no If yes, please explain in detail, including their response. Please attach a separate sheet of paper if necessary.
7. **Is the person you have described in your complaint still engaging in activity similar to your complaint?**  
☐ yes ☐ no If yes, please explain in detail. Please attach a separate sheet of paper if necessary.
8. **In which county did the facts described above occur?** \_\_\_\_\_  
(County)
9. **Did you pay money as a result of the complaint described in #5?**  
☐ yes ☐ no If yes, how much? \$ \_\_\_\_\_  
To whom did you pay the money? \_\_\_\_\_
10. **Did you receive services in exchange for your money?**  
☐ yes ☐ no If yes, what did the person or company listed in #2 do for you? Please attach a separate sheet of paper if necessary.
11. **Have you had difficulties with the services you received from the person or company listed in #2?**  
☐ yes ☐ no If yes, please explain the difficulties in detail and discuss any monies lost as a result of those difficulties. Please attach a separate sheet of paper if necessary.
12. **What type of legal representation or services were you seeking or did you obtain?**  
☐ Domestic Relations (divorces, child custody and adoption issues)  
☐ Probate, Wills, Trusts and Estates  
☐ Personal Injury  
☐ General Business law (incorporations or the like)  
☐ Worker's Compensation  
☐ Criminal Law  
☐ Immigration Law  
☐ Tax Law  
☐ Other \_\_\_\_\_

13. **Did you respond to an advertisement when selecting the person or company listed in #2?**

☐ yes ☐ no

If yes, please provide a copy of the advertisement, if available. If not, please list where the advertisement ran or where you saw it.

14. **Have you filed a complaint with any other state, federal or local agency?**

☐ yes ☐ no

If yes, please list the agencies you have contacted.

15. **Have you filed a private legal action against the person or company listed in #2?**

☐ yes ☐ no

If yes, please provide your attorney's name, address and telephone number and attach a copy of the lawsuit.

\_\_\_\_\_  
Attorney's name

\_\_\_\_\_  
Attorney's address

\_\_\_\_\_  
Attorney's telephone number

16. **Are you aware of any other persons that have information about the events described in #5?**

☐ yes ☐ no

If yes, please provide each person's name, address and telephone number where indicated below.

Name

Complete Address

Telephone Number


**IMPORTANT: PLEASE READ CAREFULLY**

Please retain a copy of this complaint and all documents for your files.

If you have been injured by a person engaging in the unauthorized practice of law, you have a limited time to sue under Tennessee law. Because the Office of the Attorney General does not represent private individuals, you should consult a private attorney regarding your legal rights.

Please be advised that completing this form does not protect your legal rights.

You may also want to report your complaint to your local District Attorney General and the Board of Professional Responsibility.

Please be advised that complaints submitted may be subject to the Public Records Act. As a result, you should redact any personal information such as social security numbers or bank account numbers prior to submitting this form.

My signature below indicates that the information given in this complaint is true and correct to the best of my knowledge and belief. I understand it may be used in legal proceedings or provided to the individuals and/or entities referenced in this form.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**



PRO SE DIVORCE INFORMATION  
(Filing without an attorney)

1. The clerks at the Clerk and Master's office are not attorneys and therefore, by law, are not allowed to give any legal advice or tell anyone how to proceed to file their own divorce. They do not have any "forms" to file a divorce without an attorney. However, the Supreme Court of Tennessee has recently created forms for uncontested divorces without minor or dependent children. These forms become effective for use in the Tennessee courts on September 1, 2011. You can learn more at [www.justiceforalltn.com](http://www.justiceforalltn.com)
2. You always have the right to represent yourself in Court. However, if you choose to do this, it is your responsibility to research and educate yourself on the correct procedures to be followed and to prepare and file the appropriate paperwork.
3. The clerks may only take the paperwork you bring and tell you the correct filing fee that will have to be paid. They cannot tell you which Court you need to file in or whether or not your paperwork is correct. Filing fees for divorce vary from \$195.00 without children to \$270.00 with children and must be paid when your paperwork is filed.
4. If you decide to represent yourself, you need to understand that if you fail to file the proper paperwork or follow the correct procedure, the Judge may dismiss your case. If this happens, your filing fee would not be refunded to you. Also, there is a 60 day waiting period on divorces without children and a 90 day waiting period on divorces with children before a divorce may be granted. If your case is dismissed you would have to re-file your divorce, pay another filing fee, and your waiting period would start all over again.
5. If you decide to file your own paperwork, it will be your responsibility to contact the Judge's secretary to set your court date for final hearing. You will need to appear in Court, act as your own attorney, and have your final decree prepared for the Judge's signature. The clerk will give you the contact information for the Judge's secretary.
6. If granted, copies of your Final Decree of Divorce are not automatically issued. You may request copies at the Clerk and Master's office for a fee of fifty-cents (\$.50) per page. If you need a certified copy there is an additional \$5.00 fee. All certified copies must include any pages filed with your Final Decree, such as a Marital Dissolution Agreement, Parenting Plan, Property Settlement, etc.



Name of Pro Se Petitioner: \_\_\_\_\_

Daytime Phone No. \_\_\_\_\_ 2<sup>nd</sup> Phone No. \_\_\_\_\_

I got the divorce forms from: \_\_\_\_\_

I paid a fee for my forms: Yes \_\_\_\_\_ No \_\_\_\_\_

**By choosing to represent myself, instead of hiring an attorney, I understand that if I do not file the appropriate paperwork correctly my case may be dismissed. If it is dismissed, I understand that I will not receive a refund of my filing fee.**

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

If your divorce is granted, the following information will be sent to TN Vital Records to record your divorce. Your information will be kept confidential, but is required to record your divorce.

Husband's Name: \_\_\_\_\_  
First Middle Last

Address: \_\_\_\_\_  
Street City State Zip Code

Date of Birth: \_\_\_\_\_ State or Country of Birth: \_\_\_\_\_

Race: \_\_\_\_\_ Number of this marriage: \_\_\_\_\_

Husband's Social Security Number: \_\_\_\_\_

Wife's Name: \_\_\_\_\_  
First Middle Last Maiden

Address: \_\_\_\_\_  
Street City State Zip Code

Date of Birth: \_\_\_\_\_ State or Country of Birth: \_\_\_\_\_

Race: \_\_\_\_\_ Number of this marriage: \_\_\_\_\_

Wife's Social Security Number: \_\_\_\_\_

Place of Marriage: \_\_\_\_\_  
State County

Date of Marriage: \_\_\_\_\_ Date of Separation: \_\_\_\_\_

# of Children Born of this marriage: \_\_\_\_\_ # of Children under 18: \_\_\_\_\_

FILED 6/20/13  
ENTERED BOOK \_\_\_\_\_ PAGE \_\_\_\_\_  
DEBBIE McMILLAN BARRETT  
As

Docket No. 2013-268

## PROCEDURAL HISTORY

The Court entered an Order on May 31, 2013, directing Mr. Kramer to submit his Affidavit in accordance with the requirements of Supreme Court Rules,

Rule 8, Rules of Professional Conduct, Rule 1.5(a)(1-10) in support of his request for fees and a copy of his engagement letter. The Court furnished Mr. Kramer with its Order and a copy of the Tennessee Supreme Court's Opinion in David Lee Wright ex rel. Kaitlyn Lee Wright v. Anita J. Wright, et al., 337 S.W.3d 166 (Tenn. 2011). The Court directed that Mr. Kramer comply with the requirements of the Supreme Court's directive as set forth in the Wright opinion in submitting his request for approval of the award of attorney's fees and expenses. The Court further directed that Mr. Kramer supply the Court with authority, based on the facts and circumstances of this case, authorizing the Court to award attorney's fees to an attorney not licensed to practice law in Tennessee where that attorney has not been admitted *pro hac vice*. Mr. Kramer, in his Affidavit, did not address all of the factors required under Supreme Court Rule 1.5, specifically factors 2, 3, 5, 6, and 9. Further, Mr. Kramer has supplied the Court with no authority which authorizes this Court to award fees to an attorney providing legal services in this state who is not licensed by the Supreme Court to practice law in this state nor admitted *pro hac vice*.

#### FINDINGS OF FACT

Mr. Kramer represented the interests of a minor child in a personal injury matter resulting from a gymnastics accident, which occurred in Tennessee on August 9, 2012. The child and the child's parents reside in Tennessee. The gymnastics camp at which the child was injured was insured by the Philadelphia Insurance Company. Through communications and correspondence with the Philadelphia Insurance Company, Mr. Kramer was able to negotiate a monetary

lump-sum settlement of \$80,000.00, which was agreed upon by all parties and approved by the Circuit Court for the Twenty-First Judicial District of Tennessee at Franklin on May 31, 2013.

Mr. Kramer submitted a signed affidavit on June 5, 2013, attesting to the details and nature of his representation of the minor child. Mr. Kramer investigated, pursued, and negotiated the child's claim for bodily injury with the Philadelphia Insurance Company. Although the accident that caused the child's injury and the treatment thereof occurred in Tennessee, the only proceeding brought in Tennessee was the motion for approval of minor's settlement. According to Mr. Kramer's affidavit, all correspondence that resulted in the settlement took place between himself and the subject insurance carriers, whom are located in Pennsylvania and Kansas. Mr. Kramer is not licensed to practice law in Tennessee—nor did he seek to appear *pro hac vice* for this case.

### CONCLUSIONS OF LAW

#### I. Mr. Kramer engaged in the unauthorized practice of law in Tennessee.

Tennessee Code Annotated section 23-3-101(1) defines "law business" as

the advising or counseling for valuable consideration of any person as to any secular law, the drawing or the procuring of or assisting in the drawing for valuable consideration of any paper, document or instrument affecting or relating to secular rights, the doing of any act for valuable consideration in a representative capacity, obtaining or tending to secure for any person any property or property rights whatsoever, or the soliciting of clients directly or indirectly to provide such services.

Further, Tennessee Code Annotated section 23-3-103(a) provides, in relevant part, that "[n]o person shall engage in the practice of law or do law business . . . unless

the person has been duly licensed and while the person's license is in full force." Supreme Court Rules, Rule 5, Rules of Professional Conduct, Rule 5.5(a) provides, in relevant part, that "[a] lawyer shall not practice law in the jurisdiction in violation of the regulation of the legal profession of that jurisdiction." As the Court cannot find a Tennessee case that defines "in the jurisdiction," in the context of Rule 5.5, the Court relies on persuasive out-of-state authority for guidance.

In our view, the practice of law 'in California' entails sufficient contact with the *California client* to render the nature of the legal service a clear legal representation. In addition to a quantitative analysis, we must consider the nature of the unlicensed lawyer's activities in the state. Mere fortuitous or attenuated contacts will not sustain a finding that the unlicensed lawyer practiced law 'in California.' The primary inquiry is whether the unlicensed lawyer engaged in sufficient activities in the state, or created a continuing relationship with the *California client* that included legal duties and obligations.

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Our definition does not necessarily depend on or require the unlicensed lawyer's physical presence in the state. Physical presence here is one factor we may consider in deciding whether the unlicensed lawyer has violated section 6125, but it is by no means exclusive. For example, one may practice law in the state in violation of section 6125 although not physically present here by advising a *California client* on California law in connection with a California legal dispute by telephone, fax, computer, or other modern technological means. Conversely, although we decline to provide a comprehensive list of what activities constitute sufficient contact with the state, we do reject the notion that a person *automatically* practices law 'in California' whenever that person practices California law anywhere, or 'virtually' enters the state by telephone, fax, e-mail, or satellite."

Estate of Condon, 65 Cal. App. 4th 1138, 1145, 76 Cal. Rptr. 2d 922, 926 (1998) (citations omitted).

The Court finds that Mr. Kramer engaged in the practice of law in the State of Tennessee. He did so without a license or without being admitted *pro hac vice*. He did so in violation of Tennessee law.

- II. As the Court must develop a record in determining the reasonableness of attorney's fees, the Court, as a practical matter, cannot award attorney's fees to Mr. Kramer as he is not licensed to practice law in Tennessee, and, as such, cannot file pleadings, motions, briefs, or other papers in the Court. As a result, the Court cannot develop the required record. Additionally, Mr. Kramer is not entitled to be compensated based on the theory of *quantum meruit*.

The Tennessee Supreme Court has outlined the procedure for trial courts to award attorney's fees in minor settlement cases as follows:

In terms of procedure, the trial court should develop an evidentiary record, make findings concerning each of the factors, and then determine a reasonable fee that "depend[s] upon the particular circumstances of the individual case." White, 937 S.W.2d at 800. To enable appellate review, trial courts should clearly and thoroughly explain the particular circumstances and factors supporting their determination of a reasonable fee in a given case. See Hoffert, 656 F.2d at 166 (finding no abuse of discretion in fee award to attorney representing minor tort victim where trial court considered each of the DR 2-106 factors and provided factual findings, "fully supported by the record," that were "sufficiently detailed to permit appellate review"); Ex parte Peck, 572 So.2d at 429 ("A reviewing court must be able to ascertain from the record what factors the trial court considered in awarding the attorney fee.").

Id. at 185-86 (internal citation omitted).

In order for the trial court to make a record, as mandated by our Supreme Court, in awarding attorney's fees, Mr. Kramer must file affidavits, exhibits, etc. However, to do so, Mr. Kramer would be engaging in the "unauthorized practice of law" in violation of Rule 5.5 as he is not licensed to practice law in Tennessee.

Therefore, the Court, as a practical matter, cannot award attorneys fees to an attorney who is not licensed to practice in Tennessee, i.e., Mr. Kramer, because an unlicensed attorney cannot file documents that would allow a court to make the required findings.<sup>1</sup>

This does not, however, end the Court's inquiry. The Court now turns to whether Mr. Kramer, as an attorney engaging in the unauthorized practice of law in the State of Tennessee, may recover attorney's fees based on *quantum meruit*. While the Court can find no case directly on point, the Court relies on the Tennessee Supreme Court's guidance in White v. McBride, 937 S.W.2d 796 (Tenn. 1996). In White, the Supreme Court found that an attorney's fees were excessive, and, therefore, violated Supreme Court Rules, Rule 8, Code of Professional Responsibility, DR 2-106. Id. Moreover, and particularly relevant to this Order, the Supreme Court explained that

[w]e are of the opinion, however, that an attorney who enters into a fee contract, or attempts to collect a fee, that is clearly excessive under DR 2-106 should not be permitted to take advantage of the *Cummings* rule. A violation of DR 2-106 is an ethical transgression of a most flagrant sort as it goes directly to the heart of the fiduciary relationship that exists between attorney and client. To permit an attorney to fall back on the theory of *quantum meruit* when he unsuccessfully fails to collect a clearly excessive fee does absolutely nothing to promote ethical behavior. On the contrary, this interpretation would encourage attorneys to enter exorbitant fee contracts,

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<sup>1</sup> To cure this defect, Mr. Kramer should have filed a motion to be admitted *pro hac vice* under Rule 19 of the Supreme Court Rules, which provides in relevant part that "[a] lawyer not licensed to practice law in Tennessee, licensed in another United States jurisdiction, and who resides outside Tennessee shall be permitted to appear *pro hac vice*, file pleadings, motions, briefs, and other papers and to fully participate in in a particular proceeding before a trial or appellate court of Tennessee if the lawyer complies with the following conditions: . . . ." If admitted under Rule 19, Mr. Kramer would have been able to file the appropriate documents in this Court, allowing the Court to make an appropriate record in awarding attorneys fees.



secure that the safety net of *quantum meruit* is there in case of a subsequent fall.

We do not agree with White's dire prediction that this holding will have a chilling effect on attorneys' willingness to enter contingent fee contracts. Disciplinary Rule 2-106 is not a weapon that a recalcitrant client can employ at will to nullify the fee contract and thereby escape all liability for legal services. Rather, by its very terms the rule condemns only those fees that a lawyer of ordinary prudence would definitely and firmly believe to be excessive and sets forth a list of factors to determine when a fee is reasonable. Because of the high threshold embodied in the rule, we are confident that DR 2-106 will serve to deny recovery only to those who truly deserve it.

Having so concluded, we reverse that portion of the lower courts' judgment awarding fees on a *quantum meruit* basis. Any prior authority in conflict with this opinion is hereby expressly overruled.

Id. at 803.

In this case, Mr. Kramer engaged in the unauthorized practice of law, and, as a result, violated Rule 5.5 of the Rules of Professional Conduct and Tennessee Code Annotated section 23-3-103(a). A violation of Rule 5.5 is an ethical violation and, as was the infringement in White, "of a most flagrant sort as it goes directly to the heart of the fiduciary relationship that exists between attorney and client." White, 937 S.W.2d at 803. To allow an attorney who has engaged in the unauthorized practice of law to recover attorney's fees through the theory of *quantum meruit* for that unethical behavior would do nothing but promote such behavior. "On the contrary, this interpretation would encourage attorneys to [engage in the unauthorized practice of law], secure that the safety net of *quantum meruit* is there in case of a subsequent fall." Id. at 803. As a result, reasoning by analogy to the

facts of *White v. McBride*, 937 S.W.2d 796 (Tenn. 1996), and the holding of Wright, *infra*, the Court finds that Mr. Kramer's contract for a contingent fee in this case is unenforceable, and he is not entitled to be compensated based on *quantum meruit*. Accordingly, the request for attorney's fees and expenses submitted by Jeffrey S. Kramer shall be, and is hereby, DENIED.

IT IS SO ORDERED, ADJUDGED and DECREED.

ENTERED this 20 day of June, 2013.



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James G. Martin III  
Circuit Court Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Order was mailed, postage prepaid, to:

David P. Vial, II  
Ortale, Kelley, Herbert & Crawford  
200 4th Ave N 3rd Fl  
PO Box 198985  
Nashville, TN 37219-8985

Jeffrey Kramer  
Kramer & Rassner  
7700 N Kendall Dr.  
Miami, FL 33156

John and Deena Prichard  
992 Mooreland Blvd.  
Brentwood, TN 37027

this 24 day of June, 2013.

Ann Riden  
Circuit Court Clerk